THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

+ Writ Petition Nos.26896, 27115, 27131, 27132, 27216, 27411, 27447 of 2006; 40, 62, 65, 74, 84, 259, 260, 424, 428, 438, 478, 796, 1033, and 1619 of 2007

(Common Judgment)

% 13.02.2007

Between:
G.Nagabhushanam
Anantapur and others

…Petitioners

And

The Government of Andhra Pradesh,
Rep.by its Secretary, Transport, Roads & Buildings (Tr.I)
Department, Secretariat, at Hyderabad.

…Respondents

! COUNSEL FOR Petitioners: Sri E.Maruthi Raja,

Sri B.Sivarama Krishnaiah

^ COUNSEL FOR RESPONDENTS: G.P. for Transport

< Gist:

> Head Note:

? CITATIONS:

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition Nos.26896 of 2006 & batch

Dated 13-02-2007

Between:
G.Nagabhushanam
Anantapur and others

…Petitioners

And

The Government of Andhra Pradesh,
Rep.by its Secretary, Transport, Roads & Buildings (Tr.I)
Department, Secretariat, at Hyderabad.

…Respondents

THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Writ Petition Nos.26896 of 2006 & batch

COMMON JUDGMENT:

In this batch of writ petitions, the action of the respondents, requiring the petitioners to surrender the '*basic permits'* issued to the respective vehicles, for the purpose of cancellation;

is challenged. The impugned action is said to be in pursuance of a circular dated 11-12-2006, issued by the Transport Commissioner, Government of Andhra Pradesh.

The petitioners are the owners of contract carriages. All of them were issued basic permits in Form-P.C., under Section 74 of Motor Vehicles Act, 1988 (for short '*the Act'*) read with Rule 174 of the A.P. Motor Vehicles Rules, 1989 (for short '*the Rules'*). The said permits were issued in pursuance of a policy decision taken by the Government and issued in memo, dated 01-06-1991. These permits enabled the respective owners to obtain special permits under

sub-section (8) of Section 88 of the Act. The Transport Commissioner issued a circular dated 11-12-2006, stating *inter alia* that sub-section (8) of Section 88 has since been amended, and it is no longer necessary to issue the basic permits. He instructed all the Regional Transport Authorities to take steps to cancel the basic permits. Acting on the same, the Regional Transport Authorities of the concerned Districts, issued notices to the petitioners, requiring them to surrender the basic permits on or before 31-12-2006, for the purpose of cancellation. It was also indicated that, in case the permits are not surrendered, they would be deemed to have been cancelled, with effect from 31-12-2006.

The petitioners contend that the relevant provisions of the Act and the Rules, and the policy decision of the Government, which constituted the basis for issuance of the basic permits; have not been amended in any manner, and that the permits granted to them cannot be cancelled, on the basis of instructions issued by the Transport

Commissioner. It is stated that even if there exists any circumstances warranting change the existing policy, it is for the State Government, through the Secretary, to take necessary steps, and the Commissioner does not have the power or jurisdiction to override or annul the existing policy. The petitioners further contend that there is no provision in the Motor Vehicles Act for cancellation of permits, except on the grounds of violation of conditions, and as a penal measure. It is also their case that the impugned notices are violative of principles of nature justice, since the decision to cancel the permits was taken without hearing them.

On behalf of the respondents, counter affidavits are filed, narrating the circumstances that led to the present step. It is stated that the practice of issuance of basic permits was evolved, at a time, when existence of policy, of one kind or the other, was a condition precedent for grant of special permit, under sub-section (8) of Section 88 of the Act. It is stated that the said provision has since been amended, making it permissible to grant special permits, without insisting on existence of permits of any kind.

Sri E. Maruthi Raja, and B. Sivarama Krishnaiah, and other learned counsel appearing for the petitioners, submit that the action of the respondents in proposing to cancel the basic permits is contrary to law and violative of the prescribed procedure. They contend that even after the amendment to sub-section (8)
of Section 88 of the Act, existence of a basic permit is becoming necessary, particularly when the vehicles are being plied outside the State, on the strength of special permits. They contend that the memo issued by the Commissioner had, in fact, recognized this fact, and without taking any remedial steps, in accordance with law, the basic permits are sought to be cancelled. Learned counsel point out that the

policy declared by the Government through a memo issued by the Secretary of the Department, cannot be annulled through the circular of a Commissioner.

Another facet of their submission is that the Commissioner is not vested with any statutory powers under the Act and the Rules, and that he cannot be permitted to meddle with the *quasi-judicial* functions, to be discharged by the respective Regional Transport Authorities. Violation of principles of natural justice is also complained of.

Learned Government Pleader for Transport, on the other hand, submits that the Act and the Rules do not provide for issuance of any basic permits, and such permits were evolved only to overcome the requirement under the un-amended provision of sub-section (8) of Section 88. He contends that when the very issuance of basic permits was not under any specific provision, cancellation thereof does not result, in any illegality. He further contends that, with the amendment to sub-section (8) of Section 88, the necessity to have basic permits does not subsist and the present steps were initiated only to prevent misuse of the permits.

Chapter V of the Act, dealing with the control of transport vehicles provides for issuance of permits of various categories.

In exercise of the powers under the relevant provisions of the Act, the State of Andhra Pradesh made the A.P. Motor Vehicles Rules 1989. Chapter V of the Rules, and in particular Rule 174, stipulates the various forms of permits, that can be granted to the stage carriages, contract carriages etc.

A contract carriage permit is issued under Section 74 of the Act. Such a permit would enable the holder thereof to ply the vehicle subject to the conditions stipulated therein. The permit issued under Section 74 is '*period specific*'. The holder of such a permit can ply the

vehicle within the region for which it was granted. Where is becomes necessary for a vehicle to ply outside the region, a permit is to be obtained under Section 88. Sub-section (8) thereof provides for grant of special permits. Before this sub-section (8) is amended in the year 1984, it was possible for the Regional Transport Authority of a region, or the State Transport Authority of a State, to grant special permits only to those vehicles which are covered by a stage carriage permit issued under Section 72 or a contract carriage permit under Section 74. Such of the Transport operators, who are not holding either stage carriage or contract carriage permits, but were intending to operate their vehicles, on special permits, were facing the difficulty. On a representation made by them, the State of A.P., took a policy decision, to grant the basic permit under the umbrella of Rule 174, to make the owners of the vehicles eligible to apply and obtain special permits under sub-section (8) of Section 88 of the Act. This was contained in memo No.751/Tr.II/91-3, dated 01-06-1991. The relevant portion of the memo reads as under:

> "Government consider that in order to encourage tourism in the State, and to safeguard the interest of Andhra Pradesh State Road Transport Corporation and taking into view the liberal approach of the Act in granting contract carriage permits, it is desirable to grant basic permit to idle contract carriages so as to facilitate issue of special permits under section 88(8) the area of operation of such basic permits may not exceed a distance of 2 KMS of radius from the residence of the permit holders to ply the vehicle empty. Government also consider that for the vehicles covered by basic contract carriage permits, a nominal tax not exceeding Rs.10/- per seat per quarter excluding the drivers seat should be collected. If the system of issue of basic permits is not considered proper at a later date, it shall be subject to review.
>
> The Transport Commissioner is requested to take action for issue of basic permits to contract carriages. He is

> also requested to submit a draft Notification with respect to the proposed concessional rate of tax on these vehicles".

In pursuance of this memo, the Regional Transport Authorities started issuing basic permits under Rule 174 of the Rules. The area for which the permit is valid was stipulated, as a radius of 2 Kms, from the residence of permit holder. It was endorsed that the permit does not entitled the holder, to hire the vehicle as stage carriage or public carrier. At the most, this constituted as a basis for the Regional or State Transport Authority, to issue special permits.

Through Act 54/94, sub-section (8) of Section 88 was amended, paving the way for issuance of special permits to any vehicle, whether or not covered by a permit under Sections 72 or 74, or sub-section (9) of Section 88 of the Act. Even after this amendment, the practice of issuing basic permits was continued till recently. Some of the permits are valid till the year 2010.

The Commissioner of Transport, had issued a circular dated 11-12-2006. In this, he narrated the circumstances under which the Government issued memo dated 01-06-1991 and referred to the amendment to sub-section (8) of Section 88 of the Act. He also recognized the fact that some of the States, such as Tamil Nadu, are insisting on existence of permits of one kind or the other, in addition to a special temporary permit, and that the effort to convince them, did not fructify. He ultimately instructed the Regional Transport Authorities as under:

> "To sort out all these problems, it is hereby instructed to all district officers to convert all the existing basic permits into vehicles plying within the Home district and any one contiguous district to those of home district permits and to collect tax appropriately and they shall not continue the basic permits beyond 31st December 2006. They are also

> instructed to not to issue basic permits plying within the home district and any one contiguous district henceforth. The district officers are further instructed to grant home district and one contiguous permits only instead of basic permits after collecting applicable tax".

In pursuance of this circular, the concerned Regional Transport Authorities issued notices, requiring the holders of pucca permits to surrender them for cancellation. The permit holders were not required to show cause as to why the basic permits shall not be cancelled, much less the reasons therefor, were stated.

As observed in the preceding paragraphs, the basic permits came to be issued to the petitioners under specific provisions of law, and in pursuance of a policy decision taken by the Government. If the amendment to sub-section (8) of Section 88 warranted revision of the policy, it was for the State Government to have done so. The memo, dated 01-06-1991 remains unaltered even as of now. The relevant provisions such as Rule 174 of the Rules under which the permit was issued, are not amended.

The Transport Commissioner is not vested with any statutory powers under the Act and the Rules. It is only in Rule 483, that a mention is made to him, as Head of the Department. The policy formulation in the State is done through the Secretary. The Commissioner is only vested with the powers of superintendence over the various authorities under the Act, on the administrative side, obviously, to implement the provisions of the Act and the Rules, and the policies framed by the Government. The Commissioner cannot issue any circulars in contravention of the policy formulated by the Government. If, according to him, any change in the existing policy is warranted, the maximum he can do is, to address the Government and apprise it, of the necessity. The action of the Commissioner in issuing

the circular, which has the effect of annulling the memo of the Government, dated 01-06-1991 cannot be sustained in law.

The power to issue permits of various categories, be it, by State Transport Authority, or Regional Transport Authority, is purely *quasi-judicial* in nature. The decisions rendered by them are subject to appeals, reviews, revisions etc. Exercise of such a power cannot be interfered with, by general instructions, issued by superior authorities. In clear terms, the Commissioner required the Regional Transport Authorities to desist from issuing basic permits and to cancel the existing ones. To that extent, the action of the Commissioner is violative of settled principles of administrative law.

The Act and Rules provide not only for issuance of permits, but also the cancellation thereof, in the event of violation of terms and conditions. The permit issued under the relevant provisions of law can be cancelled only in accordance with the procedure stipulated thereunder. The compliance, in this regard is required to be on substantive as well as procedural aspects. The substantive aspect requires the concerned authority to apply its mind to the facts of the case, with reference to the relevant provisions of law. The procedural requirement obligates the authority to hear from the effected parties, before taking a final decision. On both fronts, there is a clear non-compliance, in the instant cases. The result is that the action of the respondents cannot be sustained in law. They are unable to point out any violation of the provisions of law, by the writ petitioners, on account of the continuance of the basic permits. It is also not urged that there would be any prejudice to the interests of the State, due to the permits.

The impugned action suffers from more defects than one, as pointed out. The writ petitions are allowed, as prayed for. There shall

be no order as to costs.

L. NARASIMHA REDDY, J

Dt.13-02-2007.

Note: L.R. copy to be marked.
*(B/O) KO**